

IN THE SENATE

SENATE BILL NO. 1265, As Amended

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

RELATING TO AIRPORT ZONING; AMENDING SECTION 21-502, IDAHO CODE, TO REMOVE CERTAIN PROVISIONS RELATING TO AVIATION HAZARDS CONTRARY TO PUBLIC INTEREST; REPEALING SECTION 21-503, IDAHO CODE, RELATING TO AIRPORT ZONING REGULATIONS; REPEALING SECTION 21-504, IDAHO CODE, RELATING TO PROCEDURE FOR ZONING AN AVIATION HAZARD AREA; REPEALING SECTION 21-505, IDAHO CODE, RELATING TO AIRPORT ZONING REQUIREMENTS; REPEALING SECTION 21-505A, IDAHO CODE, RELATING TO PERMITS AND VARIANCES, MARKING AND LIGHTING; REPEALING SECTION 21-505B, IDAHO CODE, RELATING TO RELATION TO COMPREHENSIVE ZONING REGULATIONS; REPEALING SECTION 21-506, IDAHO CODE, RELATING TO JUDICIAL REVIEW; REPEALING SECTION 21-507, IDAHO CODE, RELATING TO ENFORCEMENT AND REMEDIES; REPEALING SECTION 21-508, IDAHO CODE, RELATING TO ACQUISITION OF AIR RIGHTS; AMENDING SECTION 67-6502, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE THAT PUBLIC AIRPORTS ARE ESSENTIAL COMMUNITY FACILITIES; AMENDING SECTION 67-6508, IDAHO CODE, TO PROVIDE FOR PUBLIC AIRPORT FACILITIES IN THE PLANNING DUTIES OF A PLANNING AND ZONING COMMISSION; AMENDING SECTION 67-6509, IDAHO CODE, TO PROVIDE THAT NOTICE OF INTENT TO AMEND A ZONING PLAN SHALL BE SENT TO THE MANAGER OF A LOCAL AIRPORT; AMENDING SECTION 67-6512, IDAHO CODE, TO PROVIDE THAT A STUDY OF AVIATION HAZARDS MAY BE REQUIRED FOR A SPECIAL USE PERMIT; AMENDING SECTION 67-6515A, IDAHO CODE, TO PROVIDE FOR NOTICE AND HEARING IN THE TRANSFER OF DEVELOPMENT RIGHTS AND TO PROVIDE THAT AVIATION HAZARDS SHALL BE AVOIDED IN THE TRANSFER OF DEVELOPMENT RIGHTS; AND AMENDING SECTION 67-6516, IDAHO CODE, TO PROVIDE FOR NOTICE AND HEARING IN THE CONSIDERATION OF VARIANCE PERMITS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 21-502, Idaho Code, be, and the same is hereby amended to read as follows:

21-502. AVIATION HAZARDS CONTRARY TO PUBLIC INTEREST. It is hereby found that an aviation hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(a) That the creation or establishment of an aviation hazard is a public nuisance and an injury to the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of aviation hazards be prevented;

~~(c) That this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.~~

~~It is further declared that both the prevention of the creation or establishment of aviation hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing aviation hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land and property interests therein.~~

SECTION 2. That Sections [21-503](#), [21-504](#), [21-505](#), [21-505A](#), [21-505B](#), [21-506](#), [21-507](#) and [21-508](#), Idaho Code, be, and the same are hereby repealed.

SECTION 3. That Section 67-6502, Idaho Code, be, and the same is hereby amended to read as follows:

67-6502. PURPOSE. The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, ~~fi~~bre fiber and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

(m) To protect public airports as essential community facilities that provide safe transportation alternatives and contribute to the economy of the state.

SECTION 4. That Section 67-6508, Idaho Code, be, and the same is hereby amended to read as follows:

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and

1 existing conditions, trends, compatibility of land uses, desirable goals
2 and objectives, or desirable future situations for each planning component.
3 The plan with maps, charts, and reports shall be based on the following com-
4 ponents as they may apply to land use regulations and actions unless the plan
5 specifies reasons why a particular component is unneeded.

6 (a) Property Rights -- An analysis of provisions which may be necessary
7 to ensure that land use policies, restrictions, conditions and fees do not
8 violate private property rights, adversely impact property values or cre-
9 ate unnecessary technical limitations on the use of property and analysis as
10 prescribed under the declarations of purpose in chapter 80, title 67, Idaho
11 Code.

12 (b) Population -- A population analysis of past, present, and future
13 trends in population including such characteristics as total population,
14 age, sex, and income.

15 (c) School Facilities and Transportation -- An analysis of public
16 school capacity and transportation considerations associated with future
17 development.

18 (d) Economic Development -- An analysis of the economic base of the area
19 including employment, industries, economies, jobs, and income levels.

20 (e) Land Use -- An analysis of natural land types, existing land covers
21 and uses, and the intrinsic suitability of lands for uses such as agricul-
22 ture, forestry, mineral exploration and extraction, preservation, recre-
23 ation, housing, commerce, industry, and public facilities. A map shall be
24 prepared indicating suitable projected land uses for the jurisdiction.

25 (f) Natural Resources -- An analysis of the uses of rivers and other wa-
26 ters, forests, range, soils, harbors, fisheries, wildlife, minerals, ther-
27 mal waters, beaches, watersheds, and shorelines.

28 (g) Hazardous Areas -- An analysis of known hazards as may result from
29 susceptibility to surface ruptures from faulting, ground shaking, ground
30 failure, landslides or mudslides; avalanche hazards resulting from de-
31 velopment in the known or probable path of snowslides and avalanches, and
32 floodplain hazards.

33 (h) Public Services, Facilities, and Utilities -- An analysis showing
34 general plans for sewage, drainage, power plant sites, utility transmission
35 corridors, water supply, fire stations and fire fighting equipment, health
36 and welfare facilities, libraries, solid waste disposal sites, schools,
37 public safety facilities and related services. The plan may also show loca-
38 tions of civic centers and public buildings.

39 (i) Transportation -- An analysis, prepared in coordination with
40 the local jurisdiction(s) having authority over the public highways and
41 streets, showing the general locations and widths of a system of major traf-
42 fic thoroughfares and other traffic ways, and of streets and the recommended
43 treatment thereof. This component may also make recommendations on build-
44 ing line setbacks, control of access, street naming and numbering, and a
45 proposed system of public or other transit lines and related facilities
46 including rights-of-way, terminals, future corridors, viaducts and grade
47 separations. The component may also include port, harbor, ~~aviation~~, and
48 other related transportation facilities.

1 (j) Recreation -- An analysis showing a system of recreation areas, in-
 2 cluding parks, parkways, trailways, river bank greenbelts, beaches, play-
 3 grounds, and other recreation areas and programs.

4 (k) Special Areas or Sites -- An analysis of areas, sites, or struc-
 5 tures of historical, archeological, architectural, ecological, wildlife,
 6 or scenic significance.

7 (l) Housing -- An analysis of housing conditions and needs; plans for
 8 improvement of housing standards; and plans for the provision of safe, san-
 9 itary, and adequate housing, including the provision for low-cost conven-
 10 tional housing, the siting of manufactured housing and mobile homes in sub-
 11 divisions and parks and on individual lots which are sufficient to maintain
 12 a competitive market for each of those housing types and to address the needs
 13 of the community.

14 (m) Community Design -- An analysis of needs for governing landscaping,
 15 building design, tree planting, signs, and suggested patterns and standards
 16 for community design, development, and beautification.

17 (n) Agriculture -- An analysis of the agricultural base of the area in-
 18 cluding agricultural lands, farming activities, farming-related businesses
 19 and the role of agriculture and agricultural uses in the community.

20 (o) Implementation -- An analysis to determine actions, programs, bud-
 21 gets, ordinances, or other methods including scheduling of public expendi-
 22 tures to provide for the timely execution of the various components of the
 23 plan.

24 (p) National Interest Electric Transmission Corridors -- After noti-
 25 fication by the public utilities commission concerning the likelihood of
 26 a federally designated national interest electric transmission corridor,
 27 prepare an analysis showing the existing location and possible routing
 28 of high voltage transmission lines, including national interest electric
 29 transmission corridors based upon the United States department of energy's
 30 most recent national electric transmission congestion study pursuant to
 31 sections 368 and 1221 of the energy policy act of 2005. "High-voltage trans-
 32 mission lines" means lines with a capacity of one hundred fifteen thousand
 33 (115,000) volts or more supported by structures of forty (40) feet or more in
 34 height.

35 (q) Public Airport Facilities -- An analysis prepared with assistance
 36 from the Idaho transportation department division of aeronautics, if re-
 37 quested by the planning and zoning commission, and the manager or person in
 38 charge of the local public airport identifying, but not limited to, facility
 39 locations, the scope and type of airport operations, existing and future
 40 planned airport development and infrastructure needs, and the economic im-
 41 act to the community.

42 Nothing herein shall preclude the consideration of additional planning
 43 components or subject matter.

44 SECTION 5. That Section 67-6509, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE
 47 PLAN. (a) The planning or planning and zoning commission, prior to recom-
 48 mending the plan, amendment, or repeal of the plan to the governing board,
 49 shall conduct at least one (1) public hearing in which interested persons

1 shall have an opportunity to be heard. At least fifteen (15) days prior to
2 the hearing, notice of the time and place and a summary of the plan to be
3 discussed shall be published in the official newspaper or paper of general
4 circulation within the jurisdiction. The commission shall also make avail-
5 able a notice to other papers, radio and television stations serving the
6 jurisdiction for use as a public service announcement. Notice of intent to
7 adopt, repeal or amend the plan shall be sent to all political subdivisions
8 providing services within the planning jurisdiction, including school dis-
9 tricts and the manager or person in charge of the local public airport, at
10 least fifteen (15) days prior to the public hearing scheduled by the com-
11 mission. Following the commission hearing, if the commission recommends a
12 material change to the proposed amendment to the plan which was considered at
13 the hearing, it shall give notice of its proposed recommendation and conduct
14 another public hearing concerning the matter if the governing board will
15 not conduct a subsequent public hearing concerning the proposed amendment.
16 If the governing board will conduct a subsequent public hearing, notice of
17 the planning and zoning commission recommendation shall be included in the
18 notice of public hearing provided by the governing board. A record of the
19 hearings, findings made, and actions taken by the commission shall be main-
20 tained by the city or county.

21 (b) The governing board, as provided by local ordinance, prior to adop-
22 tion, amendment, or repeal of the plan, may conduct at least one (1) public
23 hearing, in addition to the public hearing(s) conducted by the commission,
24 using the same notice and hearing procedures as the commission. The govern-
25 ing board shall not hold a public hearing, give notice of a proposed hearing,
26 nor take action upon the plan, amendments, or repeal until recommendations
27 have been received from the commission. Following consideration by the gov-
28 erning board, if the governing board makes a material change in the recommen-
29 dation or alternative options contained in the recommendation by the commis-
30 sion concerning adoption, amendment or repeal of a plan, further notice and
31 hearing shall be provided before the governing board adopts, amends or re-
32 peals the plan.

33 (c) No plan shall be effective unless adopted by resolution by the gov-
34 erning board. A resolution enacting or amending a plan or part of a plan
35 may be adopted, amended, or repealed by definitive reference to the specific
36 plan document. A copy of the adopted or amended plan shall accompany each
37 adopting resolution and shall be kept on file with the city clerk or county
38 clerk.

39 (d) Any person may petition the commission or, in absence of a com-
40 mission, the governing board, for a plan amendment at any time, unless the
41 governing board has established by resolution a minimum interval between
42 consideration of requests to amend, which interval shall not exceed six (6)
43 months. The commission may recommend amendments to the comprehensive plan
44 and to other ordinances authorized by this chapter to the governing board at
45 any time.

46 SECTION 6. That Section 67-6512, Idaho Code, be, and the same is hereby
47 amended to read as follows:

48 67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part
49 of a zoning ordinance each governing board may provide by ordinance adopted,

1 amended, or repealed in accordance with the notice and hearing procedures
2 provided under section 67-6509, Idaho Code, for the processing of appli-
3 cations for special or conditional use permits. A special use permit may
4 be granted to an applicant if the proposed use is conditionally permitted
5 by the terms of the ordinance, subject to conditions pursuant to specific
6 provisions of the ordinance, subject to the ability of political subdivi-
7 sions, including school districts, to provide services for the proposed
8 use, and when it is not in conflict with the plan. Denial of a special use
9 permit or approval of a special use permit with conditions unacceptable to
10 the landowner may be subject to the regulatory taking analysis provided for
11 by section 67-8003, Idaho Code, consistent with requirements established
12 thereby.

13 (b) Prior to granting a special use permit, at least one (1) public
14 hearing in which interested persons shall have an opportunity to be heard
15 shall be held. At least fifteen (15) days prior to the hearing, notice of
16 the time and place, and a summary of the proposal shall be published in the
17 official newspaper or paper of general circulation within the jurisdiction.
18 Each local government is encouraged to post such notice on its official
19 websites, if one is maintained. Notice may also be made available to other
20 newspapers, radio and television stations serving the jurisdiction for use
21 as a public service announcement. Notice shall be posted on the premises not
22 less than one (1) week prior to the hearing. Notwithstanding jurisdictional
23 boundaries, notice shall also be provided to property owners or purchasers
24 of record within the land being considered, three hundred (300) feet of the
25 external boundaries of the land being considered, and any additional area
26 that may be substantially impacted by the proposed special use as determined
27 by the commission, provided that in all cases notice shall be provided indi-
28 vidually by mail to property owners or purchasers of record within the land
29 being considered and within three hundred (300) feet of the external bound-
30 aries of the land being considered and provided further that where a special
31 use permit is requested by reason of height allowance that notice shall be
32 provided individually by mail to property owners or purchasers of record
33 within no less than three (3) times the distance of the height of the allowed
34 height of a structure when more than one hundred (100) feet and within no less
35 than one (1) mile when the peak height of a structure in an unincorporated
36 area is four hundred (400) feet or more and, when four hundred (400) feet
37 or more, the structure's proposed location and height shall be stated in
38 the notice. Any property owner entitled to specific notice pursuant to the
39 provisions of this subsection shall have a right to participate in public
40 hearings before a planning commission, planning and zoning commission or
41 governing board.

42 (c) When notice is required to two hundred (200) or more property owners
43 or purchasers of record, alternate forms of procedures which would provide
44 adequate notice may be provided by local ordinance in lieu of mailed notice.
45 In the absence of a locally adopted alternative notice procedure, sufficient
46 notice shall be deemed to have been provided if the city or county provides
47 notice through a display advertisement at least four (4) inches by two (2)
48 columns in size in the official newspaper of the city or county at least fif-
49 teen (15) days prior to the hearing date, in addition to site posting on all
50 external boundaries of the site.

1 (d) Upon the granting of a special use permit, conditions may be at-
2 tached to a special use permit including, but not limited to, those:

- 3 (1) Minimizing adverse impact on other development;
- 4 (2) Controlling the sequence and timing of development;
- 5 (3) Controlling the duration of development;
- 6 (4) Assuring that development is maintained properly;
- 7 (5) Designating the exact location and nature of development;
- 8 (6) Requiring the provision for on-site or off-site public facilities
9 or services;
- 10 (7) Requiring more restrictive standards than those generally required
11 in an ordinance;
- 12 (8) Requiring mitigation of effects of the proposed development upon
13 service delivery by any political subdivision, including school dis-
14 tricts, providing services within the planning jurisdiction.

15 (e) Prior to granting a special use permit, studies may be required of
16 the social, economic, fiscal, and environmental effects and any aviation
17 hazard as defined in section 21-501(2), Idaho Code, of the proposed special
18 use. A special use permit shall not be considered as establishing a binding
19 precedent to grant other special use permits. A special use permit is not
20 transferable from one (1) parcel of land to another.

21 (f) In addition to other processes permitted by this chapter, excep-
22 tions or waivers of standards, other than use, inclusive of the subject
23 matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may
24 be permitted through issuance of a special use permit or by administrative
25 process specified by ordinance, subject to such conditions as may be imposed
26 pursuant to a local ordinance drafted to implement subsection (d) of this
27 section.

28 SECTION 7. That Section 67-6515A, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 67-6515A. TRANSFER OF DEVELOPMENT RIGHTS. (1) Any city or county gov-
31 erning body may, by ordinance and following notice and hearing procedures
32 provided for under section 67-6509, Idaho Code, create development rights
33 and establish procedures authorizing landowners to voluntarily transfer
34 said development rights subject to:

35 (a) Such conditions as the governing body shall determine to ful-
36 fill the goals of the city or county to preserve open space, protect
37 wildlife habitat and critical areas, ~~and~~ enhance and maintain the rural
38 character of lands with contiguity to agricultural lands suitable for
39 long-range farming and ranching operations and avoid creation of avia-
40 tion hazards as defined in section 21-501(2), Idaho Code; and

41 (b) Voluntary acceptance by the landowner of the development rights and
42 any land use restrictions conditional to such acceptance.

43 (2) Before designating sending areas and receiving areas, a city or
44 county shall conduct an analysis of the market in an attempt to assure that
45 areas designated as receiving areas will have the capacity to accommodate
46 the number of development rights expected to be generated from the sending
47 areas.

48 (3) Ordinances providing for a transfer of development rights shall not
49 require a property owner in a sending area to sell development rights. Once

1 a transfer of development rights has been exercised it shall constitute a re-
 2 striction on the development of the property in perpetuity, unless the city
 3 or county elects to extinguish such restriction pursuant to the provisions
 4 of this chapter.

5 (4) A city or county may not condition an application for a permit to
 6 which an applicant is otherwise entitled under existing zoning and subdivi-
 7 sion ordinances on the acquisition of development rights. A city or county
 8 may not condition an application for a zoning district boundary change which
 9 is consistent with the comprehensive plan on the acquisition of development
 10 rights. A city or county may not reduce the density of an existing zone and
 11 thereafter require an applicant to acquire development rights as a condition
 12 of approving a request for a zoning district boundary change which would per-
 13 mit greater density.

14 (5) It shall be at the discretion of the persons selling and buying a
 15 transferable development right to determine whether a right will be trans-
 16 ferred permanently without being exercised in a designated receiving area or
 17 whether a right will have requirements to be exercised within a designated
 18 receiving area within a set time period. If the development right is not used
 19 before the end of the time period provided by written contract and any exten-
 20 sion thereof, the development right will revert to the owner of the property
 21 from which it was transferred.

22 (6) No transfer of a development right, as contemplated herein, shall
 23 affect the validity or continued right to use any water right that is ap-
 24 purtenant to the real property from which such development right is trans-
 25 ferred. The transfer of a water right shall remain subject to the provisions
 26 of title 42, Idaho Code.

27 (7) (a) Ordinances providing for the transfer of development rights
 28 shall prescribe procedures for the issuance and recording of the in-
 29 struments necessary to sever development rights from the sending
 30 property and to affix the development rights to the receiving property.
 31 These instruments shall specifically describe the property, shall be
 32 executed by all lienholders and other parties with an interest of record
 33 in any of the affected property, and shall be recorded with the county
 34 recorder. Transfers of development rights without such written and
 35 recorded consent shall be void.

36 (b) A development right which is transferred shall be deemed to be an
 37 interest in real property and the rights evidenced thereby shall inure
 38 to the benefit of the transferee, his heirs, successors and assigns.
 39 An unexercised development right shall not be taxed as real or personal
 40 property.

41 (8) For the purposes of this section:

42 (a) "Development rights" shall mean the rights permitted to a lot, par-
 43 cel or area of land under a zoning or other ordinance respecting permis-
 44 sible use, area, density, bulk or height of improvements. Development
 45 rights may be calculated and allocated in accordance with such factors
 46 as area, floor area, floor area ratios, density, height limitations, or
 47 any other criteria that will effectively quantify a value for the devel-
 48 opment right in a reasonable and uniform manner that will carry out the
 49 objectives of this section.

(b) "Receiving area" shall mean one (1) or more designated areas of land to which development rights generated from one (1) or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.

(c) "Sending area" shall mean one (1) or more designated areas of land in which development rights may be designated for use in one (1) or more receiving areas.

(d) "Transfer of development rights" shall mean the process by which development rights are transferred from one (1) lot, parcel or area of land in any sending area to another lot, parcel or area of land in one (1) or more receiving areas.

SECTION 8. That Section 67-6516, Idaho Code, be, and the same is hereby amended to read as follows:

67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEARING. Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.